

Calendar No. 158

103D CONGRESS
1ST SESSION

S. 557

A BILL

To combat telemarketing fraud.

JULY 22 (legislative day, JUNE 30), 1993
Reported without amendment

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To combat telemarketing fraud.

IN THE SENATE OF THE UNITED STATES

MARCH 10 (legislative day, MARCH 3), 1993

Mr. HATCH (for himself, Mr. BIDEN, Mr. THURMOND, Ms. MOSELEY-BRAUN, Mr. DECONCINI, Mr. SIMPSON, Mr. PRESSLER, and Mr. HATFIELD) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

JULY 22 (legislative day, JUNE 30), 1993

Reported by Mr. BIDEN, without amendment

A BILL

To combat telemarketing fraud.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Senior Citizens
5 Against Marketing Scams Act of 1993”.

6 **SEC. 2. FINDINGS AND DECLARATION.**

7 The Congress makes the following findings and dec-
8 laration:

1 (1) Unprecedented Federal law enforcement in-
2 vestigations have uncovered a national network of il-
3 licit telemarketing operations.

4 (2) Most of the telemarketing industry is legiti-
5 mate, employing over 3,000,000 people through di-
6 rect and indirect means.

7 (3) Illicit telemarketers, however, are an in-
8 creasing problem which victimizes our Nation's sen-
9 ior citizens in disproportionate numbers.

10 (4) Interstate telemarketing fraud has become a
11 problem of such magnitude that the resources of the
12 Department of Justice are not sufficient to ensure
13 that there is adequate investigation of, and protec-
14 tion from, such fraud.

15 (5) Telemarketing differs from other sales ac-
16 tivities in that it can be carried out by sellers across
17 State lines without direct contact. Telemarketers can
18 also be very mobile, easily moving from State to
19 State.

20 (6) It is estimated that victims lose billions of
21 dollars a year as a result of telemarketing fraud.

22 (7) Consequently, Congress should enact legis-
23 lation that will—

24 (A) enhance Federal law enforcement re-
25 sources;

1 (B) ensure adequate punishment for
2 telemarketing fraud; and

3 (C) educate the public.

4 **SEC. 3. ENHANCED PENALTIES FOR TELEMARKETING**
5 **FRAUD.**

6 (a) OFFENSE.—Part I of title 18, United States
7 Code, is amended—

8 (1) by redesignating chapter 113A as chapter
9 113B; and

10 (2) by inserting after chapter 113 the following
11 new chapter:

12 **“CHAPTER 113A—TELEMARKETING FRAUD**

“Sec.

“2325. Definition.

“2326. Enhanced penalties.

“2327. Restitution.

13 **“§ 2325. Definition**

14 “In this chapter, ‘telemarketing’—

15 “(1) means a plan, program, promotion, or
16 campaign that is conducted to induce—

17 “(A) purchases of goods or services; or

18 “(B) participation in a contest or sweep-
19 stakes,

20 by use of 1 or more interstate telephone calls initi-
21 ated either by a person who is conducting the plan,
22 program, promotion, or campaign or by a prospec-

1 tive purchaser or contest or sweepstakes participant;
2 but

3 “(2) does not include the solicitation of sales
4 through the mailing of a catalog that—

5 “(A) contains a written description or il-
6 lustration of the goods or services offered for
7 sale;

8 “(B) includes the business address of the
9 seller;

10 “(C) includes multiple pages of written
11 material or illustration; and

12 “(D) has been issued not less frequently
13 than once a year,

14 if the person making the solicitation does not solicit
15 customers by telephone but only receives calls initi-
16 ated by customers in response to the catalog and
17 during those calls take orders without further solici-
18 tation.

19 **“§ 2326. Enhanced penalties**

20 “An offender that is convicted of an offense under
21 1028, 1029, 1341, 1342, 1343, or 1344 in connection with
22 the conduct of telemarketing—

23 “(1) may be imprisoned for a term of 5 years
24 in addition to any term of imprisonment imposed
25 under any of those sections, respectively; and

1 “(2) in the case of an offense under any of
2 those sections that—

3 “(A) victimized a significant number of
4 persons over the age of 55; or

5 “(B) targeted persons over the age of 55,
6 may be imprisoned for a term of 10 years in addi-
7 tion to any term of imprisonment imposed under any
8 of those sections, respectively.

9 **“§ 2327. Restitution**

10 “In sentencing an offender under section 2326, the
11 court shall order the offender to pay restitution to any
12 victims and may order the offender to pay restitution to
13 others who sustained losses as a result of the offender’s
14 fraudulent activity.”.

15 (b) TECHNICAL AMENDMENTS.—

16 (1) PART ANALYSIS.—The part analysis for
17 part I of title 18, United States Code, is amended
18 by striking the item relating to chapter 113A and
19 inserting the following:

“113A. Telemarketing fraud 2325
“113B. Terrorism 2331”.

20 (2) CHAPTER 113B.—The chapter heading for
21 chapter 113B of title 18, United States Code, as re-
22 designated by subsection (a)(1), is amended to read
23 as follows:

1 **“CHAPTER 113B—TERRORISM”.**

2 **SEC. 4. FORFEITURE OF FRAUD PROCEEDS.**

3 Section 982(a) of title 18, United States Code, is
4 amended by adding at the end the following new para-
5 graph:

6 “(6) The Court, in sentencing an offender
7 under section 2326, shall order that the offender
8 forfeit to the United States any real or personal
9 property constituting or derived from proceeds that
10 the offender obtained directly or indirectly as a
11 result of the offense.”.

12 **SEC. 5. INCREASED PENALTIES FOR FRAUD AGAINST**
13 **OLDER VICTIMS.**

14 (a) REVIEW.—The United States Sentencing Com-
15 mission shall review and, if necessary, amend the sentenc-
16 ing guidelines to ensure that victim related adjustments
17 for fraud offenses against older victims over the age of
18 55 are adequate.

19 (b) REPORT.—Not later than 180 days after the date
20 of enactment of this Act, the Sentencing Commission shall
21 report to Congress the result of its review under sub-
22 section (a).

1 **SEC. 6. REWARDS FOR INFORMATION LEADING TO PROS-**
2 **ECUTION AND CONVICTION.**

3 Section 3059 of title 18, United States Code, is
4 amended by adding at the end the following new sub-
5 section:

6 “(c)(1) In special circumstances and in the Attorney
7 General’s sole discretion, the Attorney General may make
8 a payment of up to \$10,000 to a person who furnishes
9 information unknown to the Government relating to a pos-
10 sible prosecution under section 2325 which results in a
11 conviction.

12 “(2) A person is not eligible for a payment under
13 paragraph (1) if—

14 “(A) the person is a current or former officer
15 or employee of a Federal, State, or local government
16 agency or instrumentality who furnishes information
17 discovered or gathered in the course of government
18 employment;

19 “(B) the person knowingly participated in the
20 offense;

21 “(C) the information furnished by the person
22 consists of an allegation or transaction that has been
23 disclosed to the public—

24 “(i) in a criminal, civil, or administrative
25 proceeding;

1 “(ii) in a congressional, administrative, or
2 General Accounting Office report, hearing,
3 audit, or investigation; or

4 “(iii) by the news media, unless the person
5 is the original source of the information; or

6 “(D) when, in the judgment of the Attorney
7 General, it appears that a person whose illegal ac-
8 tivities are being prosecuted or investigated could
9 benefit from the award.

10 “(3) For the purposes of paragraph (2)(C)(iii), the
11 term ‘original source’ means a person who has direct and
12 independent knowledge of the information that is fur-
13 nished and has voluntarily provided the information to the
14 Government prior to disclosure by the news media.

15 “(4) Neither the failure of the Attorney General to
16 authorize a payment under paragraph (1) nor the amount
17 authorized shall be subject to judicial review.”.

18 **SEC. 7. AUTHORIZATION OF APPROPRIATIONS.**

19 There are authorized to be appropriated for fiscal
20 year 1994 for the purposes of carrying out this Act and
21 the amendments made by this Act—

22 (1) \$10,000,000 for the Federal Bureau of In-
23 vestigation to hire, equip, and train no fewer than
24 100 special agents and support staff to investigate
25 telemarketing fraud cases;

(2) \$3,500,000 to hire, equip, and train no fewer than 30 Department of Justice attorneys, assistant United States Attorneys, and support staff to prosecute telemarketing fraud cases; and

(3) \$10,000,000 for the Department of Justice to conduct, in cooperation with State and local law enforcement agencies and senior citizen advocacy organizations, public awareness and prevention initiatives for senior citizens, such as seminars and training.

SEC. 8. BROADENING APPLICATION OF MAIL FRAUD STATUTE.

Section 1341 of title 18, United States Code, is amended—

(1) by inserting “or deposits or causes to be deposited any matter or thing whatever to be sent or delivered by any private or commercial interstate carrier,” after “Postal Service,”; and

(2) by inserting “or such carrier” after “causes to be delivered by mail”.

SEC. 9. FRAUD AND RELATED ACTIVITY IN CONNECTION WITH ACCESS DEVICES.

Section 1029 of title 18, United States Code, is amended—

(1) in subsection (a)—

1 (A) by striking “or” at the end of para-
2 graph (3); and

3 (B) by inserting after paragraph (4) the
4 following new paragraphs:

5 “(5) knowingly and with intent to defraud ef-
6 fects transactions, with 1 or more access devices is-
7 sued to another person or persons, to receive pay-
8 ment or any other thing of value during any 1-year
9 period the aggregate value of which is equal to or
10 greater than \$1,000;

11 “(6) without the authorization of the issuer of
12 the access device, knowingly and with intent to de-
13 fraud solicits a person for the purpose of—

14 “(A) offering an access device; or

15 “(B) selling information regarding or an
16 application to obtain an access device; or

17 “(7) without the authorization of the credit
18 card system member or its agent, knowingly and
19 with intent to defraud causes or arranges for an-
20 other person to present to the member or its agent,
21 for payment, 1 or more evidences or records of
22 transactions made by an access device;”;

23 (2) in subsection (c)(1) by striking “(a)(2) or
24 (a)(3)” and inserting “(a) (2), (3), (5), (6), or (7)”;
25 and

1 (3) in subsection (e)—

2 (A) by striking “and” at the end of para-
3 graph (5);

4 (B) by striking the period at the end of
5 paragraph (6) and inserting “; and”; and

6 (C) by adding at the end the following new
7 paragraph:

8 “(7) the term ‘credit card system member’
9 means a financial institution or other entity that is
10 a member of a credit card system, including an en-
11 tity, whether affiliated with or identical to the credit
12 card issuer, that is the sole member of a credit card
13 system.”.

14 **SEC. 10. INFORMATION NETWORK.**

15 (a) HOTLINE.—The Attorney General shall establish
16 a national toll-free hotline for the purpose of—

17 (1) providing general information on
18 telemarketing fraud to interested persons; and

19 (2) gathering information related to possible
20 violations of this Act.

21 (b) ACTION ON INFORMATION GATHERED.—The At-
22 torney General shall work in cooperation with the Federal
23 Trade Commission to ensure that information gathered
24 through the hotline shall be acted on in an appropriate
25 manner.